IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1549 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMANBHAI L PATEL

Versus

STATE OF GUJARAT

Appearance:

MR BB NAIK for Petitioner No. 1

MR NC THAKKER, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 03/08/2001

ORAL JUDGEMENT

The petitioner was appointed as a Assistant

Teacher by the State of Gujarat and he joined in the said capacity on 18th July 1977 at Kanya Vidyalaya, Dhoraji. Thereafter, the petitioner has been serving in different schools. The service of the petitioner has been free of any blemish till March 1985.

2. On 10th April, 1985, the petitioner was posted as Head Master at Uttar Buniyadi Ashram Shala, District Dang and that is when his troubles started.

3. The petitioner received adverse remarks for the year 1984-85 by a letter dated 12th December, 1986. It is averred by the petitioner that the said remarks were false and baseless, made by one Shri M.M.Patel, the then District Education Officer, at Ahwa, so as to harass the petitioner.

4. The petitioner's representation dated 7th January, 1997 against the aforesaid remarks came to be accepted and vide order dated 13th May, 1987, it was directed that the said remarks were not to be treated as adverse remarks in the confidential records of the petitioner.

5. The petitioner has further stated that similar adverse remarks for the year 1985-86 were made and communicated to him on 16th December, 1986 only. Similar adverse remarks for the year 1986-87 were made and communicated to the petitioner only on 30th October, 1987. The petitioner made representation against both the aforesaid adverse remarks and such representations came to be rejected vide communication dated 18th July, 1987 (Annexure 'D') and 2nd February, 1988 (Annexure 'G') respectively.

6. It is against these orders at Annexure 'D' and Annexure 'G' that the petitioner has approached this Court seeking the following reliefs :

14. It is, therefore, prayed that the Hon'ble Court would be pleased :

(a) to issue necessary writ order or direction quashing and setting aside the impugned orders dated 18-7-1987 and 2-2-1988 confirming the adverse remarks made in the confidential reports of the petitioner for the years 1985-86

and 1986-87 respectively;

(b) to issue necessary writ order or direction directing the respondents to expunge the adverse remarks made in the confidential reports of the petitioner for the years 1985-86 and 1986-87;

7. We have heard Mr.B.B.Naik, learned Advocate for the petitioner and Shri NC Thakker, learned AGP on behalf of the respondents.

8. The respondents have not filed any reply and hence the averments made in the petition have gone unchallenged. The petitioner has averred on oath that respondent No.3 had acted mala fide and with malicious intention to harass the petitioner and this averment has not been denied.

9. Apart from that, the adverse remarks have been communicated to the petitioner after a period of eight months and seven months respectively, and therefore, according to the learned advocate for the petitioner, the said adverse remarks cannot be taken into consideration for the purpose of ascertaining his entitlement to promotions and all consequential benefits. In support thereon the decision of C.N. CHAVDA Vs. D.G.P., GUJARAT STATE, 1992(1) GLH 209 has been pressed into service.

Justice C.K.Thakker, as he then was, speaking for the Court has held that once it is established that the communication of adverse remarks was delayed, those remarks cannot be considered and the authorities are required to ignore those adverse entries in the confidential report. The Court, in the aforesaid decision, has taken into consideration the Government Circulars issued from time to time, which provide that adverse remarks are required to be communicated within a period of six weeks.

10. As stated hereinbefore, in the case of the petitioner, the adverse remarks for the year 1985-86 were communicated after a period of eight months and adverse remarks for the year 1986-87 were communicated after a period of seven months. In these circumstances such adverse remarks cannot be taken into consideration by the authorities as laid down by this Court in light of ratio of Apex Court in the case of State of Haryana Vs. P.C.Wadhwa, A.I.R 1987 SC 1201.

11. This petition is thus required to be allowed. We hereby quash and set aside the impugned orders dated 18th July, 1987 (Annexure 'D') and 2nd February, 1988 (Annexure 'G') which confirmed the adverse remarks entered into confidential reports of the petitioner for the years 1985-86 and 1986-87 respectively. The respondent authorities are directed not to take into consideration the aforesaid adverse remarks for the two years at the point of time of ascertainment of the petitioner's entitlement to promotions and all other consequential benefits.

The petition is accordingly allowed. Rule is made absolute. No order as to costs.

(D.A.Mehta, J)

'Bhavesh'